

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

GENE S. RUCKER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
No. 262241 Barry A. Steelman, Judge

No. E2007-00380-CCA-R3-PC - Filed August 24, 2007

The petitioner, Gene S. Rucker, appeals the Hamilton County Criminal Court's summary dismissal of his petition for post-conviction relief. Relying upon Tennessee Court of Criminal Appeals Rule 20, the State has moved this court to summarily affirm the criminal court's order. Because the record before us indicates that the post-conviction petition was filed outside the statute of limitations, we grant the motion and affirm the criminal court's order.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Gene S. Rucker, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Attorney General & Reporter; and Benjamin A. Ball, Assistant Attorney General; for the Appellee, State of Tennessee.

OPINION

In 2001, a Hamilton County jury convicted the petitioner of criminally negligent homicide and aggravated arson. The court imposed an effective sentence of 22 years to be served in the Department of Correction. The petitioner's convictions and sentences were affirmed on direct appeal on December 9, 2004, *see State v. Gene Rucker*, No. E2002-02101-CCA-R3-CD (Tenn. Crim. App., Knoxville, Dec. 9, 2004), *perm. app. denied* (Tenn. 2005), and the direct appeal ended on March 21, 2005, when our supreme court denied his application for discretionary appeal, *see id.*

On December 6, 2006, the petitioner filed an "amended" petition for post-conviction relief. On January 22, 2007, the post-conviction court entered an order dismissing the "petition." The court expressed its finding that no post-conviction filing had preceded the December 6, 2006 amended petition, and the court declared that the amended petition would be treated as the

petitioner's original filing for post-conviction relief. The court then held that the December 6, 2006 petition was barred by the one-year statute of limitations for post-conviction relief.

The petitioner alleges in his brief that he forwarded a petition for post-conviction relief to the trial court clerk's office in May 2005. He claims that he inquired about the status of his post-conviction proceeding in a letter to the trial court clerk in August 2005 and that his sister called the trial court clerk in January 2006. He claimed that the clerk informed his sister that the judge had made no decision on the case. On January 4, 2006, the petitioner, through an individual who he claimed was "an inept jailhouse lawyer," filed a petition for a writ of *mandamus* in the court of criminal appeals, which petition was denied by order entered on January 27, 2006.

The record before us shows that the post-conviction court expressly found that the petitioner's December 6, 2006 filing was his first filing for post-conviction relief. Also, the record shows that the petitioner's direct appeal ended on May 21, 2005. The Post-Conviction Procedure Act provides that petitions for relief must be filed "within one (1) year of the date of the final action of the highest state appellate court to which an appeal is taken . . . or consideration of same shall be barred." T.C.A. § 40-30-102(a) (2006). "Time is of the essence . . ., and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise." *Id.* Code section 40-30-102(b) lists exceptions to the limitations bar, but the petitioner has not alleged that any of the exceptions apply.

The jurisdiction of this court is "appellate only." *Id.* § 16-5-108(a) (1994). Based upon the record before us, the post-conviction court's findings, and the controlling law, the petitioner's bid for post-conviction relief was barred by the one-year statute of limitations.

As such, "an opinion would have no precedential value, . . . the judgment [was] rendered . . . in a proceeding before the trial judge without a jury, []such judgment or action [was] not a determination of guilt, [] the evidence does not preponderate against the finding of the trial judge, [] and . . . [n]o error of law requiring a reversal of the judgment or action is apparent on the record." *See* Tenn. R. Ct. Crim. App. 20. Accordingly, we affirm the order of the criminal court.

JAMES CURWOOD WITT, JR., JUDGE